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Re: Application No. 10/092,685

Contents:

Three (3) copies of a brief on appeal (6 pages each)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Applicant: S.C.M. Lin

Serial No.: 10/092,685

For: Electrical Contact Arrangement
for Hearing Instruments

Filed: March 7, 2002

Group: 2643

Examiner: Phylesha L. Dabney

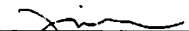
Att'y Dkt.: 2002 P 3667 US

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Brief on Appeal

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

In response to the office action mailed May 14, 2004, the applicant requests
reinstatement of the appeal commenced March 2, 2004 (37 C.F.R. § 1.193(b)(2)(ii)).
This paper supersedes the brief on appeal submitted previously.

Real Party in Interest

Siemens Hearing Instruments, Inc., Piscataway, NJ.

Related Appeals and Interferences

None.

Status of Claims

Claims 1-18 are pending in this application. Claims 1, 2, 5, 6, 9, and 10 stand rejected
under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,678,386 (Robinson et al.).
Claims 3, 4, 7, 8, and 11-18 were noted as allowable if rewritten in independent form.

The rejection of claims 1, 2, 5, 6, 9, and 10 is appealed.

Status of Amendments

No amendments were submitted after the final rejection mailed January 13, 2004.

Summary of the Invention

The wiring and the space requirements for an electrical programming contact assembly of a hearing instrument faceplate may be greatly reduced by conforming the contacts of the assembly to the contour of the instrument's battery door and providing each contact with an interconnected terminal. This configuration may be further enhanced by affixing the programming contacts to the faceplate.

Issues

The claims are not anticipated nor rendered obvious because the cited references fail to disclose each of the claimed elements.

In an office action mailed January 13, 2004, claims 1-13, 15, and 17 stood rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,915,031 (Hanright) and claims 14, 16, and 18 were noted as allowable if rewritten in independent form. The applicants then appealed, submitting a brief on March 2, 2004. In response, a new reference (Robinson et al.) was obtained and claims 1, 2, 5, 6, 9, and 10 were rejected. Office Action mailed May 14, 2004. Like the Hanright reference, Robinson et al. fails to provide all of the claimed elements -- notably, the conforming contacts -- and therefore this new brief has been submitted.

Grouping of Claims

The applicant respectfully suggests that claim 1 may be relied upon to represent all three groups (claims 1 and 2; claims 5 and 6; and claims 9 and 10).

Argument

Claims 1, 5, and 9, and the claims dependent thereon, are neither anticipated or rendered obvious as they contain elements not disclosed, taught, or suggested by the cited reference, U.S. Patent No. 6,678,386 (Robinson et al.).

To sustain a rejection based on anticipation under 35 U.S.C. § 102, "the reference must teach every element of the claim." M.P.E.P. § 2131 (8th ed., rev. 2, May 2004), page 2100-73. The M.P.E.P. goes on to state that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," quoting Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). The applicant submits that this standard has not been met, as there is no disclosure, teaching, or suggestion of:

"an electrical programming contact assembly partially affixed to the faceplate and generally adjacent and conforming to the battery door" (claim 1); or

"[a]n electrical programming contact assembly ... partially affixed to the faceplate and generally adjacent and conforming to the battery door" (claim 5); or

"[a]n electrical programming contact ... partially affixed to the faceplate and generally adjacent and conforming to the battery door" (claim 9).

In the applicants' device, the contacts "conform[] to the battery door." The specification states that "the contact portions 42, 52, and 62 extend generally vertically from the inner surface 14 of faceplate 10, although tilting or curving somewhat towards the battery door 24." Specification, p. 3, lines 11-13.

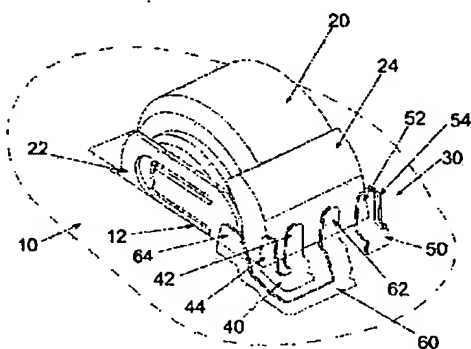


FIGURE 1

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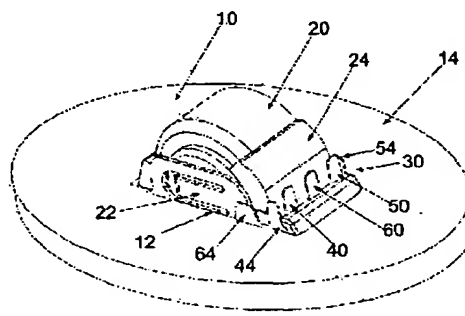
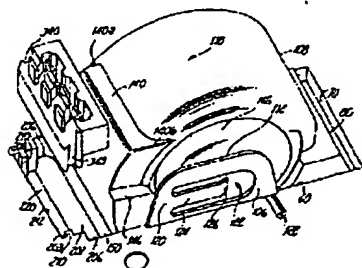


FIGURE 2

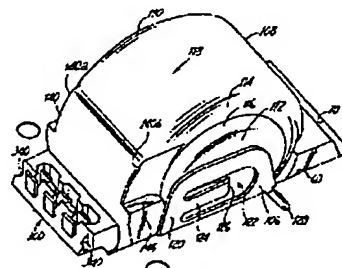
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As can be seen in these two figures, the contact assembly and contacts are "generally adjacent and conforming to the battery door." Claims 1, 5, and 9. Additionally, Figure 2 shows that the contacts are affixed to the faceplate.

Rather than teaching a programming contact or a programming contact assembly "partially affixed to the faceplate and generally adjacent and conforming to the battery door," Robinson et al. shows a "discrete programming module" 300 that slides into a rectangular slot 220. Robinson et al., column 4, lines 53-65.



Robinson et al., Figure 2



Robinson et al., Figure 3

The two figures shown above illustrate that the contacts (denominated as "electrical leads 320" - see Figure 4) are not "generally adjacent and conforming to the battery door." Rather, they assume a generally vertical orientation, perpendicular to the faceplate 10. Indeed, the programming cable 500 shown in Figures 5 and 6 (directly below) requires even greater clearance within the hearing instrument, as opposed to the applicant's space saving design.

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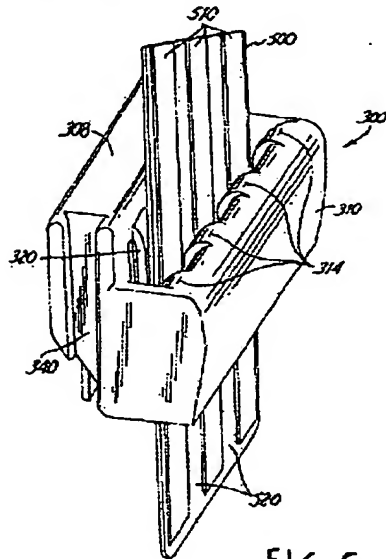


FIG. 5

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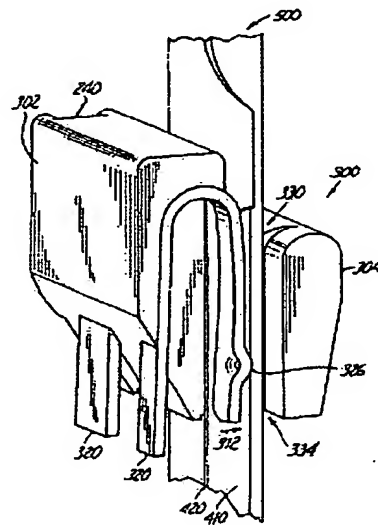


FIG. 6

In the applicant's device, the programming element (not shown in the applicant's drawings) slips between the contacts and battery door, curving towards the door, thus requiring less internal volume and, accordingly, allowing for a smaller enclosure for the instrument.

Because Robinson et al. does not disclose, teach, or suggest an electrical programming contact assembly, or an electrical contact, "generally adjacent and conforming to the battery door," it does not anticipate the independent claims (1, 5, and 9). Similarly, the reference fails to show a contact affixed to the faceplate. Rather, the contacts (electrical leads 320) are affixed to a module 300, a separate, detachable element, that slides into a rectangular slot 220 in the faceplate 10.

Nor would Robinson et al. render the claimed combinations obvious and there is no teaching or suggestion to modify Robinson et al. that would lead one to provide contacts "generally adjacent and conforming to the battery door" or "affixed to the faceplate." 35 U.S.C. § 103; M.P.E.P. § 2143.03 (8th ed., rev. 2, May 2004), p. 2100-133 ("[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art"), citing *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974) [emphasis in original].

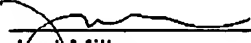
As the independent claims 1, 5, and 9 are allowable, claims 2, 6, and 10 dependent thereon, respectively, are likewise allowable.

Conclusion

Since the reference does not anticipate nor render the claims obvious, the claims are allowable over the cited art and therefore the applicant respectfully requests that the Board reverse the examiner and direct that the application be passed to allowance.

Dated: August 13, 2004

Respectfully submitted,


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Appendix

1. A modular assembly for a hearing instrument, comprising:
a faceplate;
a battery door in the faceplate; and
an electrical programming contact assembly partially affixed to the faceplate and generally adjacent and conforming to the battery door.
2. An assembly as set forth in claim 1, where
the faceplate comprises a generally rectangular opening; and
the battery door resides within the generally rectangular opening.
5. An electrical programming contact assembly for a faceplate of a hearing instrument, where the faceplate comprises a battery door and the assembly is partially affixed to the faceplate and generally adjacent and conforming to the battery door.
6. An assembly as set forth in claim 5, where
the faceplate comprises a generally rectangular opening;
the battery door resides within the generally rectangular opening.
9. An electrical programming contact for a faceplate of a hearing instrument, where
the faceplate comprises a battery door and the contact is partially affixed to the faceplate and generally adjacent and conforming to the battery door.
10. An electrical programming contact as set forth in claim 9, where
the faceplate comprises a generally rectangular opening;
the battery door resides within the generally rectangular opening.